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4 **UNITED STATES DISTRICT COURT**  
5 **DISTRICT OF NEVADA**  
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7 CRAIG TANN, ET AL.,  
8 Plaintiffs,

9 v.

10 THECHEAP NAME,  
11 Defendants.

Case No.: 2:19-cv-00788-RFB-DJA

**Order**

12 Pending before the Court is Plaintiffs' Motion to Deem Email Service Effective Process  
13 Under Rule 4 as to Defendant (ECF No. 7), filed on August 27, 2019.

14 **I. Background**

15 Plaintiffs represent that they have been unable to serve Defendant via hand delivery or  
16 international mail courier because the domain name for Defendant was registered using a fictitious  
17 name and contact information. They attach a declaration of Plaintiffs' counsel indicating that he  
18 was unsuccessful at completing hand delivery or mail service and therefore, utilized a forensic  
19 investigator to follow up on the email address registered for Defendant with Namecheap Inc. (ECF  
20 No. 7, Exh. 1). Plaintiffs claim that Namecheap Inc. verified that they were able to communicate  
21 with the registrant through the email address provided – fillbingenfillbingen@gmail.com and that  
22 Namecheap Inc. requires a valid email address in order to register and maintain a domain name  
23 through its service. Accordingly, Plaintiffs request that the Court deem an August 22, 2019 email  
24 transmission of the Amended Complaint and Summons to email address  
25 fillbingenfillbingen@gmail.com as effective service on Defendant. (ECF No. 7, Exh. 7)

26 **II. Discussion**

27 Under Federal Rule of Civil Procedure 4(f), "Unless federal law provides otherwise, an  
28 individual . . . may be served at a place not within any judicial district of the United States: . . . (3)

1 by other means not prohibited by international agreement, as the court orders.” Although the Ninth  
2 Circuit has condoned service by email when it was “the method of service most likely to reach” a  
3 defendant, Plaintiffs missed a critical step that prevents validating the August 22, 2019 email to  
4 fillbingenfillbingen@gmail.com as substituted service. *Rio Properties, Inc. v. Rio Int’l Interlink*,  
5 284 F.3d 1007, 1017 (9th Cir.2002). Plaintiffs never obtained a court order authorizing service  
6 via email before they sent the August 22, 2019 email. As the Ninth Circuit explained in  
7 *Brockmeyer v. May*, 383 F.3d 798, 806 (9th Cir.2004), Plaintiffs “must obtain prior court approval  
8 for the alternative method of serving process,” and failure obtain that prior approval is fatal to the  
9 success of substituted service. Therefore, Plaintiffs’ request to deem the August 22, 2019 email  
10 to fillbingenfillbingen@gmail.com to be effective service is denied.

11         However, Plaintiffs’ Motion provides sufficient grounds to permit substituted service by  
12 email under FRCP 4(f)(3). It comports with due process and is reasonably calculated, under the  
13 circumstances of this case, to apprise Defendant of the pendency of the action and afford it an  
14 opportunity to present objections. Service by email has been approved as substituted service under  
15 Rule 4(f)(3) when it is “the method of service most likely to reach” a defendant. *Rio Properties*,  
16 at 1017. As long ago as 2002, the Ninth Circuit acknowledged that trial courts were authorizing  
17 email as a form of substituted service under the rule and it approved email as a “constitutionally  
18 acceptable” substituted method of service upon an “elusive international defendant, striving to  
19 evade service of process” that helps “ensure the smooth functioning of our courts of law.” *Id.*

20         Here, Plaintiffs’ counsel’s Declaration (ECF No. 7, Exh. 1) has demonstrated that the facts and  
21 circumstances of this case necessitate that this Court permit a substitute method of service of  
22 process on Defendant and service by email is warranted. Therefore, the Court will provide  
23 Plaintiffs with 10 days to effectuate service by this substituted method and file proof of this service.

### III. CONCLUSION

Accordingly, IT IS HEREBY ORDERED that Plaintiffs' Motion to Deem Email Service Effective Process Under Rule 4 as to Defendant (ECF No. 7) is **denied in part and granted in part** as set forth above. Plaintiffs have 10 days to serve a copy of the Amended Complaint and Summons on Defendant by email at fillbingenfillbingen@gmail.com and file proof of this service.

Dated: August 28, 2019.

  
**Daniel J. Albregts**  
**United States Magistrate Judge**